

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

STRAIGHT PATH IP GROUP, INC.

Plaintiff,

vs.

Case No. 1:13-cv-1366-LMB-TRJ

VONAGE HOLDINGS CORP.,
VONAGE AMERICA, INC., and
VONAGE MARKETING LLC,

Defendants.

**VONAGE’S WITHDRAWAL OF MOTION TO DISMISS
CLAIMS OF INDUCED AND CONTRIBUTORY INFRINGEMENT**

On December 30, 2014, Defendants Vonage Holdings Corp., Vonage America, Inc., and Vonage Marketing LLC (collectively, “Vonage”) filed a motion requesting that the Court dismiss Plaintiff Straight Path IP Group, Inc.’s (“Straight Path”) claims of induced and contributory infringement for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). (Doc. 18.) That same day, Vonage also filed an answer to the other claims. (Doc. 21.) Vonage’s motion to dismiss was set to be heard on January 31, 2014.

While Vonage’s motion to dismiss was pending, and without filing an opposition, Straight Path filed an amended complaint on January 7, 2013. (Doc. 23.) The amended complaint purports to have been filed as a matter of right. *See* Fed. R. Civ. P. 15(a)(1)(B). In light of that amended pleading, and for the procedural reasons stated below, Vonage is withdrawing its original motion to dismiss (Doc. 18), without prejudice to its right to make a Rule 12 motion, or to otherwise respond as permitted by the rules, to the amended complaint.

Procedurally, when a party repleads of right, the amended pleading supersedes the original one. *See* 6 WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL: 3d § 1476 at 636-38 (1990). Generally, then, any motion to dismiss must be directed at the amended pleading, rather than the original one. *Id.* Likewise, a pending motion to dismiss for failure to state a claim pointing out the deficiencies in the superseded pleading may be moot, although the same motion may be reasserted against the amended pleading should any deficiency remain. *Id.* at 638. At this time, therefore, Vonage withdraws its original motion to dismiss (Doc. 18), without prejudice to its right to make a Rule 12 motion against the amended complaint, or to otherwise respond as permitted by the rules.

Respectfully submitted,

Dated: January 13, 2014

/s/ Craig C. Reilly

Craig C. Reilly (VA Bar No. 20942)

craig.reilly@ccreillylaw.com

The Law Office of Craig C. Reilly

111 Oronoco Street

Alexandria, VA 22314

Telephone: (703) 549-5354

Facsimile: (703) 549-2604

Of Counsel:

Michael J. Summersgill

michael.summersgill@wilmerhale.com

Richard W. O'Neill

richard.o'neill@wilmerhale.com

Wilmer Cutler Pickering Hale and Dorr LLP

60 State Street

Boston, MA 02109

Telephone: (617) 526-6000

Facsimile: (617) 526-5000

Grant K. Rowan

grant.rowan@wilmerhale.com

Wilmer Cutler Pickering Hale and Dorr LLP

1875 Pennsylvania Avenue, N.W.

Washington, D.C. 20006

Telephone: (202) 663-6000

Facsimile: (202) 663-6363

*Counsel for Defendants Vonage Holdings Corp.,
Vonage America, Inc., and Vonage Marketing LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the January 13, 2014, a true and correct copy of the foregoing pleading or paper was electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such electronic filing to the following:

Gregory N. Stillman
Hunton & Williams LLP
500 East Main St., Suite 1000
Norfolk, VA 23510

Sona Rewari
Hunton & Williams LLP
1751 Pinnacle Dr., Suite 1700
McLean, VA 22102

*Attorneys for Plaintiff Straight
Path IP Group, Inc.*

/s/ Craig C. Reilly
Craig C. Reilly (VA Bar No. 20942)
craig.reilly@ccreillylaw.com
The Law Office of Craig C. Reilly
111 Oronoco Street
Alexandria, VA 22314
Telephone: (703) 549-5354
Facsimile: (703) 549-2604

*Counsel for Defendants Vonage Holdings
Corporation, Vonage America, Inc., and
Vonage Marketing LLC*